



POLICE DEPARTMENT

February 25, 2019

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In the Matter of the Charges and Specifications :

- against - :

**Police Officer Daniel Mardjonovic** : Case No.  
Tax Registry No. 955123 : 2018-18413  
40<sup>th</sup> Precinct :

**Police Officer Majeed Arif** : Case No.  
Tax Registry No. 956395 : 2018-18411  
40<sup>th</sup> Precinct :

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At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Claudia Avin, Esq.  
Simone Manigo, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

For the Respondents: John Tynan, Esq.  
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To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

## **CHARGES AND SPECIFICATIONS**

### Disciplinary Case No. 2018-18413

1. Said Police Officer Daniel Mardjonovic, on or about July 16, 2017, at approximately 0436, while assigned to the 40<sup>th</sup> Precinct and on duty, in the vicinity of Outside Prospect Billiards Café, 671 Prospect Avenue, Bronx County, wrongfully used force, in that he used physical force, in that he punched Individual 1 about the face, without police necessity.

P.G. 221-02, Page 2, Prohibition 11 USE OF FORCE

### Disciplinary Case No. 2018-18411

1. Said Police Officer Majeed Arif, on or about July 16, 2017, at approximately 0436, while assigned to the 40<sup>th</sup> Precinct and on duty, in the vicinity of Outside Prospect Billiards Café, 671 Prospect Avenue, Bronx County, wrongfully used force, in that he used a chokehold, in that he placed his hands around the front and back of Individual 1's neck and applied pressure.

P.G. 221-01, Page 3, Prohibition 2 FORCE GUIDELINES

2. Said Police Officer Majeed Arif, on or about July 16, 2017, at approximately 0436, while assigned to the 40<sup>th</sup> Precinct and on duty, in the vicinity of Outside Prospect Billiards Café, 671 Prospect Avenue, Bronx County, wrongfully used force, in that he placed his hands around the front and back of Individual 1's neck, applied pressure, and restricted Individual 1's breathing.

P.G. 221-02, Page 2, Prohibition 11 USE OF FORCE

## **REPORT AND RECOMMENDATION**

The above-named members of the Department appeared before the Court on January 24, 2019.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. Respondents both testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find Respondent Mardjonovic Not Guilty of Specification 1 in Disciplinary Case No. 2018-18413. I find Respondent Arif Not Guilty of Specifications 1 and 2 in Disciplinary Case No. 2018-18411.

## ANALYSIS

It is undisputed that on July 16, 2017, at approximately 0436 hours. Respondents Mardjonovic and Arif were on-duty in the confines of the 40 precinct. Respondent Mardjonovic was assigned to anti-crime that morning and was in plain clothes in an unmarked police car. Respondent Arif was assigned to a shooting suppression team and was in uniform. Both responded separately to radio calls to the area outside the Prospect Billiards Café. Respondent Mardjonovic arrived at the scene before Respondent Arif. Both Respondents were familiar with the location from previous arrests they had made there.

Also present at the scene was Individual 1. It is undisputed that Respondent Mardjonovic punched Individual 1 in the face one time. It is also undisputed that Individual 1 was arrested at the scene and was placed in a police vehicle to be transported back to the precinct. The issue in Case 2018-18413 is whether the punch delivered by Respondent Mardjonovic was unnecessary physical force. The issues in Case 2018-18411 are whether Respondent Arif used a chokehold or restricted Individual 1's breathing while walking Individual 1 from the scene to the police vehicle.

Individual 1 did not appear to testify at trial.<sup>1</sup> A transcript and audio recording of his interview by CCRB on August 7, 2017, were admitted into evidence. (CCRB Exs. 1A and 1B) In his interview, Individual 1 initially stated that at approximately 0415 hours on July 16, 2017, when he exited Prospect Billiards with his male friend and two females, he saw a bunch of police officers. According to Individual 1 a "narcotics" officer<sup>2</sup> grabbed him and started "roughing" him up. Individual 1 stated that he tried to explain to the officer that he had nothing to do with any fight. He

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<sup>1</sup> Counsel for CCRB represented that Individual 1 had been informed that the trial was taking place on January 24, 2019, and that he told her he would not appear on advice of his attorney.

<sup>2</sup> While no photo array was presented to Individual 1 during his CCRB interview and there was no in court identification made, Respondent Mardjonovic admitted to having an encounter with Individual 1.

doesn't know why he was placed in cuffs and told he was resisting arrest. Individual 1 further stated that while he was in handcuffs, the "narcotic who refused to give me his name," punched him in the face and grabbed him and threw him to the floor. Another officer came and took the first officer off of him. Individual 1 was then lifted off the ground. He stated that one officer was lifting him by the handcuffs while another officer was picking him up by his neck. He further stated that was all he could remember. (CCRB Ex. 1B at 3-4)

Upon further inquiry by the CCRB interviewer, Individual 1 elaborated that when he exited the pool hall, there were about two to three blue and white police cars there and about 30-40 people. An officer he had seen before told them a fight had taken place and advised them to clear the area. Individual 1, while first saying the fight had been broken up when he exited the pool hall, then acknowledged that he did get to see a little scuffle as he was trying to be "nosy" about what was going on. Individual 1 estimated it was "not even two minutes" from the time the officer told him to clear the area until the officer who was in plainclothes grabbed him. Individual 1 told the investigator that he was just walking with the girl he had been with in the pool hall, whose name he doesn't know, and had his back turned when the officer grabbed him. (CCRB Ex. 1B at 6-9, 11-12, 14) Individual 1 tried to turn around to see who grabbed him and acknowledged that maybe he took offense and moved his arm to see who it was, but the officer just put handcuffs on him. Individual 1 tried to ask the officer why he was being cuffed but the officer just told him to stop resisting. According to Individual 1 the officer then just turned him around and almost immediately punched him one time in the face while he was standing with the handcuffs on. (CCRB Ex. 1B at 19-21, 24-25) Individual 1 stated that the officer threw him to the ground after he punched him. He doesn't remember how the officer threw him to the ground but he saw that another officer came to pull the officer off of him. (CCRB Ex. 1B at 30)

Individual 1 told CCRB that two uniformed officers then picked him up to lead him to the "paddy wagon." (CCRB Ex. 1B at 35-36) One officer picked him up by the handcuffs and his arm and once he was standing another officer came and "grabbed me by [sic] neck and they both started escorting me..." While they were walking him to the police vehicle, Individual 1 was screaming at them that they were "wilding." When asked by the CCRB interviewer to describe what part of his neck the officer had grabbed, Individual 1 first asked the interviewer what he meant. The interviewer asked if it was the front, the side or the back. Individual 1 stated there was one hand "through" the front and one hand "through" the back. He estimated the officer had his hands like that for 20 seconds.<sup>3</sup> The interviewer asked Individual 1 if the officer was applying any pressure to which Individual 1 responded, "yeah," and added that on the video of the incident he could hear his voice change a little bit while he was screaming about the "wilding." The interviewer then probed further by asking Individual 1 if his breathing was restricted, to which Individual 1 replied, "a little, a little, a little bit. Yes sir." Individual 1 then stated, "like you know, it wasn't like he was killing like, you know – but he still have a little force on it where, you know, he just stopped me a little bit from like – I don't know if he was trying to be a smart ass or something like that. He just kept squeezing and then, you know, let it go or release a little bit, squeeze a little. And just escorted me to the car." (CCRB Ex. 1B at 39-42)

No medical records or photographs of any injuries were submitted as evidence.

Respondent Mardjonovic testified and acknowledged that he punched Individual 1 one time in the face. He explained the circumstances that led him to use this level of force. Respondent Mardjonovic testified that on July 16, 2017, he was first called to the scene outside the pool hall around 0430 hours. There were 30-40 people there at the time. He and other officers just told people

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<sup>3</sup> There is no indication in the transcript of the CCRB interview if Individual 1 in any way demonstrated the placement of any hands he was describing.

to clear out and go home. (Tr. 23-24) As the crowd was disbanding and everything appeared to be under control, Respondent Mardjonovic left the scene. Approximately 20-30 seconds later Respondent received an officer needs assistance call from the scene and he returned. (Tr. 26) Again, he and other officers tried to move the crowd away from the pool hall. Respondent Mardjonovic testified that he saw three people including Individual 1 fighting and he ran over to the area of the fight. He saw Officer Martinez, who was in uniform grab one man who was fighting and wrap him in a bear hug. He further testified that he then saw Individual 1 hit the man who was being held by Officer Martinez. (Tr. 27-28) Respondent Mardjonovic pulled Individual 1 away and placed him against a wall which was about five to six feet away. Respondent Mardjonovic testified that he identified himself as a police officer and told Individual 1 he was under arrest. Respondent Mardjonovic pulled out his handcuffs and got one cuff on Individual 1. He then asked Individual 1 to turn around and give him his other arm. Respondent Mardjonovic testified that Individual 1 did not comply. Respondent Mardjonovic described Individual 1 as then tensing up his body and moving his shoulders. Instead of turning towards the wall to allow Respondent Mardjonovic to finish handcuffing him as he was instructed to do, Individual 1 grabbed the handcuffs with his free hand. Respondent Mardjonovic tried to hold on to the handcuffs as long as he could but a second male was on his right side and Respondent Mardjonovic had to try to push him away. At that point Individual 1 pushed himself off the wall and "aggressively" came towards Respondent Mardjonovic at the same time that the second male also came towards him. Respondent Mardjonovic had to let go of the cuffs. He described feeling scared and thinking the situation wasn't going to end well for him if he couldn't get the men into custody right away. (Tr. 30-32) Respondent Mardjonovic testified that he delivered a one-hand strike to the side of Individual 1 face. Individual 1 then took a step back and Respondent Mardjonovic, using what he described as tactics he learned in the police academy, gave Individual 1 a "quick leg tap," by Mr. [REDACTED] s knee and "tripped" him down to the ground. (Tr. 32-33) After Individual 1

fell to the ground, Respondent Mardjonovic got on top of him and tried to get Individual 1's other hand which was underneath his body to finish handcuffing him. Respondent Arif came over and assisted Respondent Mardjonovic in handcuffing Individual 1. They then lifted Individual 1 off the ground and the lieutenant on the scene told them to put Individual 1 in the RMP. Respondent Mardjonovic testified that Individual 1 made a comment that when he got out he was going to kill him and that Individual 1 also was spitting. Respondent Mardjonovic did not escort Individual 1 to the RMP. (Tr. 34-35)

On cross-examination, Respondent Mardjonovic was questioned about what he was going to arrest Individual 1 for. At trial he said assault 3 or disorderly conduct would have been the probable charges. (Tr. 42) He acknowledged that in his official department interview he stated he was going to put Individual 1 under arrest for disorderly conduct for fighting. (Tr. 46) Respondent Mardjonovic also acknowledged that the man he saw Individual 1 punch was larger than Individual 1. (Tr. 40-41) Respondent Mardjonovic also acknowledged that after he initially grabbed Individual 1 and then felt the moment had become very tense, he did not call any of the other officers on the scene for help. He explained that everything happened too fast at that point. (Tr. 49-53) With regard to the punch to Mr. [REDACTED]'s face, Respondent Mardjonovic agreed the punch was an instinctual reaction. (Tr. 54) Respondent Mardjonovic also acknowledged on cross-examination that after they got Individual 1 up off the ground, he did grab Individual 1 by the shirt and another officer grabbed Respondent Mardjonovic and told him to walk away, which he did. (Tr. 57) Respondent Mardjonovic testified that he didn't remember pushing Individual 1 when he grabbed his shirt, and after being shown the video, he testified that it looked like Individual 1 turned his body and tried to get away and was probably spitting at that point. (Tr. 58-61)

On re-direct examination, Respondent Mardjonovic testified that Individual 1 smelled of alcohol. (Tr. 61-62)

Respondent Arif testified about his involvement with Individual 1 on the evening in question. He was in uniform and responded to a call for back-up outside the pool hall. When he arrived he saw Respondent Mardjonovic on the ground with Individual 1. (Tr. 64-66) Respondent Mardjonovic was still struggling with Individual 1 so Respondent Arif grabbed one of Individual 1's arms to place the handcuff on it. He used no other force on Individual 1 except to pull his arm close enough to be handcuffed, nor did he see Respondent Mardjonovic use any force. (Tr. 67-68) After the handcuffs were placed on Individual 1 he was lifted from the ground. (Tr. 68) Respondent Arif described Individual 1 as being irate, "tensed up" and yelling and cursing. A lieutenant instructed him to take Individual 1 to the van. (Tr. 70) Respondent Arif testified that he was on Mr. [REDACTED]'s left side and had his right hand between Individual 1's shoulders and head. Respondent Arif demonstrated for the court how his hands were placed. His right hand was directly behind the neck and the left hand was near the front portion of the shoulder and collar area. (Tr. 72-73) Respondent Arif further testified that since Individual 1 was being somewhat resistant and wasn't moving towards the van on his own they had to push him. He also testified that another factor which caused him to hold Individual 1 in the manner he did was that Individual 1 had spit prior to being held. Respondent Arif used the hold as a precaution against getting spit on and also as a way to maneuver Individual 1 through the large crowd that still remained at the scene. (Tr. 73-74) The move to the van took about ten seconds and Respondent Arif denied ever placing Individual 1 in a chokehold or restricting his breathing at any time. Respondent Arif had to push Individual 1 into the van and used the hand which was still around the back of Individual 1's neck. Respondent Arif testified that Individual 1 refused medical treatment when he was taken to the precinct. (Tr. 78)

On cross-examination, Respondent Arif denied that he had his left hand at the front of Individual 1's neck and again stated it was between his shoulder and collarbone. (Tr. 82) He confirmed that Individual 1 only spat one time and he did not spit at any officer. (Tr. 83) Respondent Arif identified himself on video as the person holding Individual 1. (CCRB Ex. 2B between 0 and 4 seconds; Tr. 86).

CCRB also submitted three short video clips into evidence. (CCRB Ex. 2) On the first clip (labeled with numbers 2017 on CCRB Ex. 2), Respondent Arif is walking with Individual 1. While the quality of all the clips provides somewhat less than clear quality, Respondent Arif's right hand can be seen behind Individual 1's neck and his left hand appears to be at the top of Individual 1's left shoulder. The four fingers of Respondent Arif's left hand are not visible. The second clip (labeled Video 2 on CCRB Ex. 2) shows Respondent Mardjonovic pushing Individual 1 while he is standing up after he was handcuffed. The third clip (labeled Video 3 on CCRB Ex. 2) again shows portions of Respondent Arif walking with Individual 1. In this clip, Respondent Arif's right hand is behind Individual 1's neck with four fingers of this hand visible on the right side of Individual 1's neck. Respondent Arif's left hand, at approximately 00:42 on the video, appears to be in front of Mr. [REDACTED] s shoulder and not on his neck. There is someone yelling in the background words to the effect of, "they are choking [REDACTED]. We're going to sue the motherfuckers."

With regard to Case 2018-18413, I find that the CCRB has not met its burden of proof. Respondent Mardjonovic appeared before me at trial and testified in a credible manner. I find that he was credible based on his demeanor and the substance of his testimony both on direct and cross-examination. Respondent Mardjonovic clearly explained the situation and gave plausible reasons why it was necessary for him to deliver one strike to Individual 1's face as a tactic necessary to stop Individual 1 from attacking him with the loose handcuff as Individual 1 stepped aggressively towards

Respondent Mardjonovic. I reject CCRBs argument that Respondent was not credible because he testified at trial that he was probably going to arrest Individual 1 for assault 3 or disorderly conduct while he stated at his official department interview that he was going to arrest him for disorderly conduct while fighting. These two statements, first of all, are not directly conflicting and they also do not go to the any material fact concerning the actual physical encounter between Respondent Mardjonovic and Individual 1.

In contrast to Respondent Mardjonovic, Individual 1 did not appear at trial and unfortunately, I did not have the occasion to observe his demeanor while testifying under oath, nor was his version of events able to be tested through cross-examination. His statement to CCRB did not appear to be totally truthful in certain areas such as when he first said he didn't know any fight was going on and he wasn't involved in anything, but then said he was being "nosy" and was getting close to something happening at the scene. In another portion of his statement, despite his claim that he was not resisting arrest, he acknowledged that he took offense when an officer grabbed his arm to handcuff him and he turned towards the officer and moved his arm. He also can be seen on the video clips as being non-compliant and rather agitated and yelling after he was placed in handcuffs. His untested statement alone does not provide sufficient evidence to prove the charge by a preponderance of the evidence.

There is also no video of the portion of Individual 1's interaction with Respondent Mardjonovic which involved the punch. I reject CCRB's argument that Respondent Mardjonovic's push of Individual 1 after his arrest provides sufficient proof that Respondent Mardjonovic's actions prior to or during the punch amounted to an unnecessary use of force. First of all, it is important to note that Respondent Mardjonovic is not charged with unlawfully using force to push Individual 1. The only charge in this case pertains to the punch. Any heightened emotions Respondent Mardjonovic may have had after having to physically engage with Individual 1 to place him in handcuffs is not

conclusive proof of Respondent Mardjonovic's state of mind or intentions at the time he delivered the hand strike.

I also reject CCRB's argument that the force of the face strike was unnecessary because Respondent Mardjonovic should have first called for the assistance of other officers on the scene. The movement by Individual 1 as described by Respondent Mardjonovic was a very quick and aggressive move towards him while Individual 1 had a free handcuff to possibly swing as a weapon. In situations such as this there is not time to call for help and wait for another officer to arrive before taking action to protect oneself.

Based on the above, I find Respondent Mardjonovic Not Guilty.

With regard to Case 2018-18411, Respondent Arif is charged with wrongfully using a chokehold by placing his hands around the front and back of Mr. [REDACTED]'s neck and applying pressure (Specification 1) and of wrongfully using force in placing his hands around the front and back of Individual 1's neck, applying pressure and restricting Individual 1's breathing (Specification 2). Under Patrol Guide Section 221-01, page 3, Prohibition 2, members of the service are prohibited from using a chokehold. A chokehold is defined in this section of the patrol guide as including, but not being limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Under Patrol Guide Section 221-02, members of the service are to apply no more than reasonable force necessary to gain control of a subject and are to avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject's chest or back, thereby reducing the subject's ability to breathe.

I find that Respondent Arif testified in a credible manner based on his demeanor and on the consistency of his responses on both direct and cross-examination. His testimony is also not inconsistent with the video clips. Again the court is in the unfortunate position of not having had

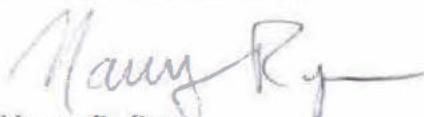
Individual t present to give his version of events and allow cross-examination to test the veracity of his narrative. In his first description of the incident at the beginning of his interview with the CCRB investigator, Individual t does not say anything about being placed in a chokehold or having his breathing restricted. His only reference to this portion of the charges are that he states an officer picked him "up on [his] neck." (CCRB Ex. 1B at 4) When he goes into further detail in response to the CCRB investigator's questions, Individual t at first mentions nothing about a chokehold or any restricted breathing. He describes just walking to the police vehicle with two officers. He describes one officer as having him by his arm and his wrist through the handcuff chain. (CCRB Ex. 1B at 40) Individual t then states that the other officer "just had me *through* my neck" (emphasis added). (CCRB Ex. 1B at 40) When the investigator asks what part of the neck the officer had, Individual t says there was one hand "through" the back and one "through" the front. Individual t again does not say anything about being choked or having his breathing restricted at this point. It is unfortunate that the CCRB investigator then begins to ask leading questions concerning the important issue in these charges regarding any pressure to the neck area and specifically if there was any restriction of Individual t's breathing. It seems likely to the Court that if Individual t had experienced choking or restricted breathing, this would have been a traumatic event that Individual t would have at least mentioned in his first recounting of his version of events. From Individual t's statement alone, without any demonstration of the hold he claims Respondent Arif had on his neck and without a clear narrative given free from the possible influence of leading questions, it is impossible to conclude from Individual t's statement alone that CCRB has met its burden of proof with regard to Specifications 1 or 2.

CCRB however also contends that the video clips support Individual t's allegations and provide sufficient evidence to prove the two specifications. I disagree. Video clips 1 and 3 show some portions of the interaction between Individual t and Respondent Arif. Neither provide absolutely

clear pictures of the interaction. In video clip 1 it is not clear where the fingers of Respondent Arif's left hand are and certainly the clip does not provide conclusive evidence that his hand was in any way positioned across the front of Mr. [REDACTED]'s neck or throat in a manner that could restrict breathing. The clip in fact is more likely consistent with Respondent Arif's description of having his left hand in the upper shoulder and neck area of Mr. [REDACTED]. Video clip 3 also does not provide evidence sufficient to support a finding of guilty as to either specification. In this clip, it is not clearly evident that Respondent Arif's left hand is even in the vicinity of Mr. [REDACTED]'s neck or throat area, but is possibly briefly seen in front of the left shoulder area.

I find Respondent Arif Not Guilty of Specifications 1 and 2.

Respectfully submitted,

  
Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**  
APR 26 2018  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER